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Section 106 Update
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The following is a list of Section 106 Updates which have been published to assist Federal agencies in carrying out the requirements of Section 106 of the National Historic Preservation Act of 1966.

1 Supplementary Guidance: **Preparation of Memoranda of Agreement**
Issued July 9, 1982

2 Memorandum: **Information Regarding Suspension of Portions of 36 CFR Part 800**
Issued July 16, 1982

3 **Manual of Mitigation Measures (MOMM)**
Issued October 12, 1982

Section 106 Updates are prepared in 3 hole punched form, for easy filing and reference in a ring binder. For further information, write: Advisory Council on Historic Preservation, 1522 K Street, NW, Suite 430, Washington, D.C. 20005

The Advisory Council on Historic Preservation serves as a primary policy advisor to the President and Congress on matters of historic preservation. An independent agency, the Council was established by the National Historic Preservation Act of 1966.

Responsibilities of the 19 member body include advising other Federal agencies to ensure that their actions are carried out with consideration to preserving the Nation's historic resources.

Manual of Mitigation Measures (MOMM)

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Introduction

Section 106 of the National Historic Preservation Act directs Federal agencies (including those State and local governments which have been legally delegated the responsibility for carrying out Federal environmental review requirements) to take into account the effects of their undertakings on historic properties, and to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on such undertakings. "Undertakings" include activities carried out by Federal agencies themselves and activities assisted, licensed, or permitted by Federal agencies.

The Council's regulations[1] implementing Section 106 envision that this "taking into account" is a creative planning process in which the agency official, the State Historic Preservation Officer (SHPO), and the Council seek ways to avoid adverse effects and maximize beneficial effects. Where avoidance of adverse effects is not prudent or feasible, the consulting parties examine measures to mitigate the adverse effects. Once agreed upon, such measures are embodied in a Memorandum of Agreement (MOA) and implemented.

During the 15 years of Council experience under Section 106, certain mitigation measures have been refined almost to the point of standardization. In order to simplify the preparation of MOA's and assist in understanding the accepted professional measures typically used, these have been compiled into this reference manual. Use of these solutions, where appropriate, should free agency officials, SHPOs and other parties to focus their attention on innovative solutions to substantive preservation problems.

Use of the Measures

Each mitigation measure in this manual is described in a general way and then followed by standard stipulation language that may be used in an MOA. Where consultation results in the conclusion that such a measure should be applied, the MOA may incorporate the standard language by reference to minimize the length and complexity of the MOA while ensuring clarity and consistency (e.g., "The building shall be rehabilitated in accordance with the stipulation contained in Section I.B. of the Council's current[2] Manual of Mitigation Measures"). Alternatively, the stipulation may be included verbatim in the MOA. As a third option, the description of the measure in this manual can be used as a guideline, and language adapted to the particular circumstances of the case. In all cases, the objective is to make the MOA clear as to the intent and the responsibilities of each party.

Where a stipulation is incorporated by reference, it will be understood that the consulting parties accept as binding the responsibilities set forth in the cited stipulation. Accordingly, consulting parties should consider carefully their ability and willingness to be bound by the terms of any stipulation adopted by reference. If there is any doubt, further consultation should resolve the uncertainty or result in a stipulation, possibly based on the standard measure, which is tailored to the specific case. Where, instead of incorporating the measure by reference or including it verbatim in the MOA, alternate language is developed, the consulting parties should be careful to ensure that it is clear and unambiguous, recalling that an MOA is a legal, contractual document which must be understandable to all who follow or review its terms.

Whichever alternative is selected, the consulting parties should design the MOA to make clear the assignment of each duty. Although it is desirable that the MOA be concise, clarity and completeness should not be sacrificed in the interests of brevity. It is essential, for example, to specify clearly the historic properties to which the mitigation measure pertains, either in the stipulation or elsewhere in the MOA. There should be no question from reading the MOA as to the treatment prescribed for each particular property or class of properties.

Each MOA should cover all the effects of the subject undertaking on all historic properties, or, in certain cases, on all specified classes of historic properties likely to be affected by the undertaking. If, for any reason, the MOA must address a smaller range of properties or effects (for example, a particular building

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[1] "Protection of Historic and Cultural Properties", 36 CFR Part 800. Special regulations for Urban Development Action Grants are found at 36 CFR Part 801.

[2] As legislation, regulations, standards and guidelines change, and as experience increases with use of the MOMM, revisions will doubtless occur. It is important that the most current edition of the MOMM be used in any consultation.

identified as eligible for the National Register before surveys are complete to identify other eligible properties), this limitation should be indicated by an appropriate clause in the MOA and explicit provision should be made for subsequent consultation to consider other effects on other properties that may subsequently be identified. (See Appendix B.)

This manual is not intended to discourage creativity in devising unique solutions to preservation problems, nor should the consulting parties rush to adopt "stock" solutions without first considering all feasible and prudent alternatives. The Council's experience indicates that these solutions will be useful in a large percentage of cases. The purpose of this manual is to ensure that they are fully understood and clearly set forth by the consulting parties in MOA's, thus reducing the likelihood of repetitive redrafts or debates over meaning. At the same time, however, the Council encourages exploration of possible new solutions to preservation problems and requires full consideration of alternatives before settling on any particular approach.

Expedited Review of MOA's

Effective July 6, 1982, the Council suspended Section 800.6(c)(1) of its regulations, which detailed how to prepare MOA's. This section was suspended as part of an effort to streamline the Section 106 review process. On July 9, 1982, the Council published supplementary guidance in the Federal Register for the preparation of MOA's (47 FR 29861). Under these guidelines, an expedited review process encourages agencies to initiate consultation with SHPO's and provide the Council with a proposed MOA, representing a mutually agreed-upon solution to the preservation problems created by the Federal agency's undertaking. The Council may then either accept the proposal as a formal MOA or seek further consultation to refine it. The criteria used by the Executive Director in reviewing such proposed MOA's were published in the July 9, 1982, guidance and are provided in Appendix B of this manual together with explanatory elaborations.

It is expected that this manual will be particularly useful to agencies and SHPO's developing MOA's for proposal to the Council, and that its use will reduce the need for the Executive Director to seek further consultation to clarify such agreements. It is also anticipated that the manual will be used during standard consultations under Section 106 and serve to simplify and expedite agency compliance with the law.

I. Architectural Mitigation Measures

A. New Construction Affecting Historic Properties

Often the Council is requested to comment on the proposed design of a rehabilitation project or new construction that affects an historic property, such as a building in or adjacent to an historic district or a new addition to an historic building. Since the Council's comments should be sought early in project planning, it is not uncommon that the design is very preliminary in nature, e.g., a plot plan, schematic elevation or narrative description. Often the agency will agree to involve the SHPO in the further development of the design.

As a matter of design, new construction should be compatible in terms of scale, massing, color, and materials with the adjacent or surrounding historic property and should be responsive to the recommended approaches to new construction set forth in The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.[3]

Except in certain unusual cases, replication or imitation of historic architectural forms is strongly discouraged, but new construction, while clearly reflecting its own time, should be sensitive to the setting in which it occurs.

Procedurally, the design and specifications for the project should be developed in consultation with the SHPO and submitted to the SHPO for approval. Lacking approval by the SHPO, the matter should be submitted by the agency to the Council for consultation and resolution of the disagreement (See Section III.C). In certain difficult cases, or cases in which the SHPO is unable or unwilling to provide design review assistance, the Council may participate in this activity in addition to or instead of the SHPO.

NEW CONSTRUCTION STIPULATION

The agency official shall ensure that the project design for new construction is compatible with the historic property specified in this Memorandum in terms of scale, massing, color, and materials and responsive to the recommended approaches to new construction set forth in The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, and that the design and specifications for the project are developed in consultation with the SHPO and submitted to the SHPO for approval.

[3] Available separately or as part of the Secretary of the Interior's Standards for Historic Preservation Projects; distributed by the National Park Service (U.S. Government Printing Office Stock No. 024-016-00105-2). The Council is developing a handbook discussing its interpretation of elements of the Secretary's Standards and Guidelines whose interpretation has in the past been the subject of dispute in connection with Council review; this handbook is planned for publication in 1983.

B. Rehabilitation of Historic Buildings or Structures

Rehabilitation of historic buildings, structures, and contributing elements in historic districts, such as sidewalks and walls, should be carried out in accordance with The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.

"Rehabilitation" is "the process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use. In rehabilitation, those portions of the property important in illustrating historic, architectural, and cultural values are preserved or restored."[4]

Rehabilitation should be clearly distinguished from "restoration," which means "the process of accurately recovering the form and details of a property as it appeared at a particular period of time by removing later work and replacing missing original work," and from "reconstruction," which means "reproducing by new construction the exact form and detail of a vanished structure, or part thereof, as it appeared at a specific period of time."[5]

[4] From Secretary of the Interior's Standards for Historic Preservation Projects, p. 2.

Rehabilitation, because it extends the useful life of an historic property and allows it to serve modern needs, is always an appropriate and beneficial use of such a property, provided the rehabilitation is done in accordance with the Secretary's Standards and respects the natural, social, architectural, and esthetic environment of the property. Restoration and reconstruction are ordinarily appropriate only where a particular educational or related purpose is served by precise replication of an historical form.[6]

Like new construction, rehabilitation design and specifications should be developed in consultation with the SHPO and submitted to the SHPO for approval. Lacking approval by the SHPO, the matter should be submitted by the agency to the Council for consultation and resolution of the disagreement (See Section III.C). In certain difficult cases, or cases in which the SHPO is unable or unwilling to provide rehabilitation design review assistance, the Council may participate in this activity in addition to or instead of the SHPO.

If Tax Act certification of the rehabilitation project is also anticipated, the Agency Official should work with the applicant to coordinate the independent review by the Department of Interior with those required under Section 106.

REHABILITATION STIPULATION

The agency official shall ensure that all rehabilitation of historic properties specified in this Memorandum is carried out in accordance with The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, and that design and specifications are developed in consultation with the SHPO and submitted to the SHPO for approval.

C. Rehabilitation Programs

When a program is proposed to rehabilitate a number of buildings or structures that may meet the National Register Criteria individually or as a district, it is usually most efficient for the agency to seek the Council's comments on the entire rehabilitation program, rather than on the rehabilitation of each building or group of buildings. In such a case, the agency, SHPO, and Council normally agree on a comprehensive approach, which includes a process for identifying historic properties and developing appropriate treatments. This approach is particularly useful, for example, when a city government plans to use Community Development Block Grant funds in a rehabilitation program and seeks the Council's comments in accordance with Department of Housing and Urban Development (HUD) regulations.[7]

A survey of the project area should be undertaken to identify properties that might meet the Criteria for listing in the National Register. The survey should be conducted in consultation with the SHPO and should take into account contemporary professional standards.[8]

Properties that meet the National Register Criteria should be rehabilitated in accordance with the recommended approaches in The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. Photographs of the properties should be taken before and upon completion of the rehabilitation. Documentation, including work write-ups and photographs, should be retained as part of the project records.

If the recommended treatment is demolition, or the Secretary of the Interior's Standards cannot be met, the agency should request the further comments of the Council.

REHABILITATION PROGRAM STIPULATION

The agency official shall ensure that a survey of the project area as defined in this

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[5] From Secretary of the Interior's Standards for Historic Preservation Projects, p. 2.

[6] See Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, p. 12.

[7] 24 CFR Part 58, "Environmental Review Procedure for Title I Community Development Block Grant Programs". See especially 24 CFR Sections 58.35, 58.36, and 58.37.

[8] Basic survey standards are set forth in Appendix B to draft 36 CFR Part 66 (42 FR 5380-82) and in the appendix to 36 CFR Part 801, both of which are reprinted as Appendix C to the Manual Of Mitigation Measures. Elaborated guidelines have been provided by the Department of the Interior in Guidelines for Local Surveys: A Basis for Preservation Planning (National Park Service; U.S. Government Printing Office stock number 024-016-00089-7) and in The Archeological Survey: Methods And Uses by Thomas F. King (National Park Service; U.S. Government Printing Office stock number 024-016-00091-9). Agency officials are also advised to consult with the SHPO for standards in use in the State. An overview of survey standards in use in various parts of the nation is given in the Council publication Where to Look: A Guide to Preservation Information, pp. 15-24, U.S. Government Printing Office stock number 052-003-00879-3.

Memorandum shall be undertaken to identify properties that might meet the Criteria for listing in the National Register of Historic Places. The survey shall be conducted in consultation with the SHPO and will take into account the professional standards identified in the Council's current Manual of Mitigation Measures.

Properties that meet the National Register Criteria shall be rehabilitated in accordance with the recommended approaches in The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. Photographs of the properties shall be taken before and upon completion of the rehabilitation. Documentation, including work write-ups and the photographs, shall be retained as part of the permanent project records.

If the recommended treatment is demolition, or the Secretary of the Interior's Standards cannot be met, the agency official shall request the further comments of the Council pursuant to 36 CFR Section 800.6(b).

D. Conveyance of Historic Buildings and Structures to Non-Federal Parties

On occasion, a Federal agency may hold title to an historic property for which it cannot identify a use and for which continued ownership and maintenance is not prudent. It may therefore be decided that the only feasible alternative is conveyance of the property.

Where a building or structure is conveyed to a non-Federal party, agreement typically may be reached on conveyance of the property in one of the manners set forth below.

Where the conveyance involves transfer of a surplus federally owned historic property, the agency official should coordinate Section 106 consultation with the independent review by the Secretary of the Interior required by Section 110(e) of the National Historic Preservation Act.

If a recipient for the building has been identified and that party is amenable to preservation of the property, the property should be transferred with restrictive covenants regarding its preservation and maintenance. Appendix A provides standard covenants.

CONVEYANCE WITHOUT MARKETING STIPULATION

The agency official shall ensure that the transfer of the historic property specified in this Memorandum incorporates the appropriate Standard Preservation Covenant specified in Appendix A of the Council's current Manual of Mitigation Measures.

If the recipient of the property has not been identified, a marketing scheme should be employed to identify a party willing to acquire and preserve the property. A marketing brochure should be prepared in draft and submitted to the State Historic Preservation Officer (SHPO) for approval. The brochure should contain information to encourage prospective recipients or purchasers, and include the following: the cost of the property, if any; a parcel map; photographs; information on the tax advantages offered for rehabilitation of certified historic properties; an outline of the property's historic or architectural significance; the standards and guidelines for rehabilitation and maintenance contained in The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings; and requirements for rehabilitation and maintenance.

A distribution list of potentially interested parties should be prepared in consultation with the SHPO. The marketing brochure then should be distributed and the property advertised in local, State, and national newspapers, as appropriate, usually including the publications of the National Trust for Historic Preservation and other preservation organizations recommended by the SHPO. Final details of the advertising, such as its frequency and the specific publications in which it will appear, should be worked out with and approved by the SHPO.

Following distribution of the brochure and advertisement, the property should be offered for an agreed-upon period.

Generally, the property recipient would be required to rehabilitate and maintain the property in accordance with the recommended approaches in The Secretary of the Interior's Standards for Rehabilitating Historic Buildings. Accordingly, the property should be transferred with restrictive covenants regarding its preservation and maintenance. Appendix A provides examples of standard covenants.

The SHPO should be given the opportunity to review all offers on the property. If conveyance of the property cannot be accomplished subject to the covenants regarding preservation and maintenance, the SHPO may approve the conveyance without such conditions, provided the property is first recorded in accordance with Section G, below.

CONVEYANCE WITH MARKETING STIPULATION

In consultation with the SHPO, the agency official shall prepare a marketing plan for the historic property specified in this Memorandum which shall include the following elements:

1. A brochure on the property, containing photographs, a parcel map, and information on its historic significance, its costs, and requirements regarding rehabilitation and

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maintenance. The brochure shall also include The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, and materials on the Federal tax benefits for certified historic structures.

2. A distribution list of potential purchasers or transferees.

3. An advertising plan and schedule.

4. A schedule for receiving and reviewing offers.

The agency official shall review all offers in consultation with the SHPO prior to acceptance. The agency official shall ensure that transfer of the property incorporates the appropriate Standard Preservation Covenant specified in Appendix A of the Council's current Manual of Mitigation Measures. If there is no acceptable offer which will conform to the requirements of rehabilitation and maintenance, the agency official with the approval of the SHPO may transfer the property without preservation covenants. In that event, the property shall be recorded prior to transfer in accordance with Section I.G. of the Council's current Manual of Mitigation Measures.

Note that the recommendations and stipulations above apply only to historic buildings and structures (including buildings and structures in historic districts). In some cases they may be applicable to historic objects as well. Conveyance of land known or thought to contain archeological sites or other sites of historic or cultural significance (e.g., historic battlefields, American Indian cultural sites) presents a considerable range of possible problems to which many optional solutions are potentially available. Typically, land to be conveyed is surveyed to identify such sites in advance of conveyance, and then the sites are retained in Federal ownership, subjected to archeological data recovery where appropriate, or conveyed with protective covenants designed to address the specific historic, cultural, or archeological values present. Occasionally, lands are conveyed without prior data recovery, other treatment measures, or even complete identification and evaluation studies having taken place. In such instances, agreements may include provisions for deferring completion of these measures until development or other change in the use of the land is contemplated.

At this time, no overall models are available for stipulations covering these kinds of conveyance situations, and they should be handled on a case-by-case basis.

E. Moving Properties

Historic properties that are movable by their nature as a matter of course (e.g., ships, trains, airplanes) can normally be moved to avoid project effects on them without any adverse effect, unless their locations themselves have achieved historic or cultural significance, their structural integrity might be impaired by relocation, or their new location would make them vulnerable to deterioration or damage.

Properties that are not inherently movable (e.g., buildings, structures such as bridges and walls, objects such as prehistoric rock art boulders) should be preserved in place where feasible.

In some cases, however, where other alternatives to avoid or mitigate impacts on an historic property are unavailable, moving the property to another site may be the best preservation approach. Where a property is to be moved from its existing site the SHPO should be afforded an opportunity to review and approve the new site. When reviewing potential sites the agency official should look for similarity of surrounding architecture, topography, land use, and vegetation. Obviously, a site closely resembling the original site is preferable. At the same time, however, the site should be one at which the property can be effectively used for modern purposes. Historic bridges, for example, are often moved to local parks and incorporated into pedestrian, equestrian, and bicycle transportation systems.

The Historic American Buildings Survey/Historic American Engineering Record (HABS/HAER) should be contacted before moving is carried out, and documentation of the original setting and context provided to HABS/HAER if HABS/HAER so requests.

The property should be moved in accordance with the recommended approaches in the Department of the Interior's Moving Historic Buildings,[9] and in consultation with the SHPO, by a professional mover who has the capability to move historic structures properly. The SHPO or local preservation groups may be able to suggest names of qualified movers.

Within a definite period shortly after the move, provisions should be made for the SHPO to reevaluate the property on its new site and make a recommendation to the Secretary of the Interior as to its continued inclusion in the National Register.

If Tax Act certification of the property is also anticipated, the agency official should work with the applicant to coordinate the independent reviews by the Department of the Interior with those required under Section 106.

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[9] Moving Historic Buildings, by John Obed Curtis. National Park Service, U.S. Government Printing Office stock number 024-016-00109-5.

MOVING STIPULATION

The agency official shall ensure that the SHPO is afforded 30 days to review and comment on the new site for any property specified for relocation in this Memorandum. The agency official shall take the SHPO's comments into account. Before the building is moved, the agency official shall contact the Historic American Buildings Survey/Historic American Engineering Record (HABS/HAER) and provide such documentation of the property's original setting and context as HABS/HAER requests. The agency official shall ensure that the property is moved in accordance with recommended approaches in the Department of the Interior's Moving Historic Buildings, in consultation with the SHPO, by a professional mover who has the capability to move historic structures properly.

Within 90 days of the move, the SHPO shall reevaluate the property on its new site and make a recommendation to the Secretary of the Interior as to its continued inclusion in the National Register.

F. New Landscaping

Modification of the environment of historic properties or relocation of historic properties often results in adverse effects that can be eliminated or minimized by landscaping. For example, landscaping can be used to screen incompatible neighboring structures or activities from the immediate surroundings of an historic building or neighborhood, to reduce noise, or to protect an archeological site from vandalism. Landscaping may also be used to reinforce those characteristics of the historic property that make it eligible for listing in the National Register. For example, if a building's facade is of architectural significance, landscaping can be used to draw attention to the facade and minimize visual incongruities with its character. Landscaping plans should be prepared in consultation with and approved by the SHPO. In certain difficult cases or cases in which the SHPO is unable or unwilling to provide review assistance, the Council may participate in this activity in addition to or instead of the SHPO.

NEW LANDSCAPING STIPULATION

The agency official shall ensure that a landscaping plan for the historic property specified in this Memorandum is prepared in consultation with the SHPO, is submitted to the SHPO for approval, and upon approval is implemented.

G. Recordation

In the absence of any feasible and prudent alternative, the Council and SHPO may agree with an agency that an historic structure or building must be demolished, substantially altered, allowed to deteriorate, or transferred out of Federal ownership or control without preservation covenants. Section 110(b) of the National Historic Preservation Act requires that in such a case appropriate records be made of the property and that those records then be deposited in the Library of Congress or in another appropriate repository designated by the Secretary. The property should therefore be recorded to assure a permanent record of its present appearance and history. The Historic American Buildings Survey/Historic American Engineering Record (HABS/HAER) should first be contacted to determine what documentation is required. All documentation must be accepted by HABS/HAER prior to the demolition, alteration or transfer. Copies of this documentation should be made available to the SHPO and appropriate local archives.

RECORDATION STIPULATION

The agency official shall request the National Park Service (Historic American Buildings Survey (HABS) or the Historic American Engineering Record (HAER), as appropriate) to determine what documentation shall be required for each property specified in this Memorandum of Agreement for demolition, alteration, deterioration, or transfer out of the agency official's control without protective covenants. The agency official shall ensure that unless otherwise agreed to by the National Park Service, all documentation is completed and accepted by HABS or HAER prior to the demolition, alteration, substantial deterioration, or transfer, and that copies of this documentation are made available to the SHPO and appropriate local archives designated by the SHPO.

H. Architectural Salvage

Sometimes the consulting parties agree that an historic building or structure has to be demolished, but that the building or structure contains significant architectural features that might be reused or should be saved for curation. Prior to demolition of the property, and after the property has been properly recorded (Section G), the SHPO or the SHPO's designee, such as a local museum, should be allowed to select architectural elements for curation or use in other projects. These items should then be carefully removed and delivered to the SHPO or the SHPO's designee.

ARCHITECTURAL SALVAGE STIPULATION

The agency official shall ensure that, after the historic property specified for demolition in the Memorandum has been recorded in accordance with this Memorandum, the SHPO or the SHPO's designee is allowed 30 days prior to demolition of the property to select architectural elements for curation or use in other projects. The agency official shall ensure that the items selected are removed in a manner that minimizes damage and are delivered to the SHPO or the SHPO's designee.

II. Archeological Mitigation Measures

A. Archeological Survey

Ordinarily, archeological surveys should be carried out during early planning for projects. Archeological sites can then be identified, evaluated, and, if eligible for the National Register, considered for preservation in place, adaptive reuse, or archeological data recovery. In some cases, however, good reasons exist for not completing archeological surveys before seeking the Council's comments.

For instance, it might be necessary to obtain the Council's comments and take immediate action with respect to standing structures of historical or architectural importance before archeological surveys have been undertaken or completed. Where partial surveys have been done, it might be desirable under some circumstances to conclude the consultation process with a Memorandum of Agreement in order to allow planning to proceed in tandem with the remainder of the survey.

In such cases, the agency, SHPO, and Council might agree that an archeological survey of the project area should be concluded in accordance with professional standards[10] and in consultation with the SHPO. If this survey results in the discovery of properties that are eligible for the National Register because they potentially could produce information important to the study of history or prehistory, they should then be treated in accordance with Section B or C below. If the survey resulted in the discovery of properties eligible for the National Register for other reasons, the Council and SHPO should normally be consulted further pursuant to the regulations.

ARCHEOLOGICAL SURVEY STIPULATION

The agency official shall ensure that an archeological survey of the project's area of environmental impact as defined in this Memorandum is conducted, taking into account the professional standards identified in the Council's current Manual of Mitigation Measures and in consultation with the SHPO. If the survey results in the discovery of properties that in the opinion of the SHPO may be eligible for the National Register because they potentially could produce information important to the study of history or prehistory, the agency official shall ensure that such properties are treated in accordance with the stipulation regarding archeological data recovery contained in this Memorandum. If the survey results in the discovery of properties which the SHPO believes may be eligible for the National Register for other reasons, the agency official shall request further comments of the Council pursuant to 36 CFR Section 800.6(b).

B. Archeological Properties: In-Place Preservation

Usually, archeological properties should be preserved in place when feasible. A plan to accomplish this and protect the property or properties should be developed in consultation with the SHPO.

ARCHEOLOGICAL PROPERTIES: IN-PLACE PRESERVATION STIPULATION

The agency official shall ensure that a plan to preserve in place archeological properties specified in this Memorandum is developed in consultation with the SHPO and submitted to the SHPO for review. Unless the SHPO objects within 15 days after receipt of the plan, the agency official shall ensure that the plan is implemented.

C. Archeological Data Recovery and Destruction

Where the consulting parties determine that in-place preservation of archeological properties is inappropriate, agreement might be reached to treat them in accordance with the Council's handbook, Treatment of Archeological Properties. Following the principles set forth in Part I of the handbook, a plan should be developed in consultation with the SHPO establishing which properties or portions of properties should be subjected to data recovery, which should be destroyed without such attention, what research questions should be addressed by the data recovery effort, and how. The details of the data recovery effort should be developed with reference to the guidelines in Part III of the handbook. The data recovery plan should then be submitted to the SHPO and the Council. If either the SHPO or the Council objects to the data recovery plan, further consultation should be undertaken to resolve the objection. In the absence of SHPO or Council objection the data recovery plan should then be implemented. Where both the following stipulation and the previous stipulation concerning in-place preservation are used,

[10] See footnote 8 and Treatment of Archeological Properties: A Handbook, available upon request from the Council.

care must be taken to specify which stipulation applies to each property.

ARCHEOLOGICAL DATA RECOVERY AND DESTRUCTION STIPULATION

The agency official shall ensure that, based on the principles in Part I of the Council's handbook Treatment of Archeological Properties, a plan is developed in consultation with the SHPO specifying: (1) which properties or portions of properties shall be subjected to data recovery; (2) which may be destroyed without such attention; and (3) what research questions shall be addressed by the data recovery effort and in what manner. The agency official shall ensure that the plan is responsive to the guidelines in Part III of the handbook. The agency official shall submit the plan to the SHPO and the Council for 15-day review. Unless the SHPO or the Council objects within 15 days after receipt of the plan, the agency official shall ensure that the plan is implemented.

D. Comprehensive Archeological Plan Implementation

In some cases, particularly where large and complicated undertakings are involved (e.g., reservoirs, surface mines, major urban developments, long pipelines), or where project impacts are widespread and indirect (e.g., regional irrigation projects), but where most or all predicted property types subject to effect are archeological, it may be most efficient to develop a complete and comprehensive plan for survey, identification, evaluation, and treatment of archeological properties. Such a plan should be developed in consultation with the SHPO and other concerned parties (e.g., landholding agencies, local communities, Indian tribes) and with the Council's Executive Director where appropriate, and should be responsive to professional standards.[11] Where feasible, historic values other than archeology may also be treated in such a plan; if the plan does not provide for treatment of non-archeological values, the MOA should provide that properties meeting the National Register Criteria for other reasons (e.g., historic buildings, Native American cultural sites) will be referred to the Council for further review and comment.

Where such a plan has been prepared, the MOA can simply incorporate it by reference.

COMPREHENSIVE PLAN STIPULATION

The agency official shall ensure that properties eligible for the National Register for their potential contribution to archeological research will be identified, evaluated, and treated in accordance with the comprehensive plan appended to this Memorandum of Agreement and referenced therein. Properties eligible for the National Register for other reasons will be considered further in accordance with 36 CFR Section 800.6(b).

E. Archeological Report Dissemination

Every archeological survey and data recovery project should result in a final report or reports meeting accepted professional standards.[12] At minimum the report should be provided to signatories of the MOA and to the National Park Service (following accepted professional standards and the Department of the Interior's "Format Standards for Final Reports of Data Recovery Programs"[13]), for possible submission to the National Technical Information Service (NTIS). When release of locational information to the public could jeopardize archeological sites, precise locational data should normally appear in a separate appendix so that it can be withheld from the NTIS publication in accordance with Section 304 of the National Historic Preservation Act of 1966, as amended.

ARCHEOLOGICAL REPORT DISSEMINATION STIPULATION

The agency official shall ensure that all final archeological reports resulting from actions pursuant to this Memorandum of Agreement are provided to all signatories and to the National Park Service for possible submission to the National Technical Information Service (NTIS). The agency official shall ensure that all such reports are responsive to the contemporary professional standards identified in the Council's current Manual of Mitigation Measures and the Department of Interior's "Format Standards for Final Reports of Data Recovery Programs." Precise locational data may be provided only in a separate appendix if it appears that its release could jeopardize archeological sites.

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[11] Examples of current comprehensive plans are available from the Interagency Resource Protection Division, National Park Service, and from the Council. Both the National Park Service and the Council anticipate publishing planning guidelines in the near future.

[12] Standards generally recognized as appropriate by the archeological profession are given in "Guidelines for the Preparation and Evaluation of Archeological Reports" in The Management of Archeological Resources: the Airlie House Report," C. R. McGimsey III and H. A. Davis, editors; Society for American Archeology 1977:64--77, Washington, D.C. The recommendations set forth in the "Guidelines" are not applicable in every instance, and discretion should be employed in applying them to reports to meet particular project needs, but the "Guidelines" are useful as a general indication of professional practice.

[13] Appendix A to draft 36 CFR Part 66 (42 FR 5477-79).

III. General Standards

With very rare exceptions, every Memorandum of Agreement should contain certain general stipulations designed to ensure that reports on the work conducted are properly prepared and distributed, that the work is carried out by qualified persons, and that mechanisms are available for the resolution of disputes about implementation of the Agreement. The following are such provisions, expected in every Memorandum of Agreement under ordinary circumstances.

A. Report Standards

Copies of final reports on surveys, archeological data recovery, architectural recording, historical research, and similar preservation activities should be supplied to the SHPO and other interested parties.

REPORTING STIPULATION

The agency official shall ensure that all final reports of activities carried out pursuant to this Memorandum of Agreement are provided to the SHPO and, upon request, to other interested parties.

B. Qualification Standards

All historic, archeological, and architectural work should be conducted by or under the direct supervision of a person or persons meeting at a minimum the appropriate qualifications set forth in the Department of the Interior's "Professional Qualifications".[14] For archeologists, reference to the compatible but more specific standards of the Society of Professional Archeologists[15] is recommended.

QUALIFICATIONS STIPULATION

The agency official shall ensure that all historic, architectural, and/or archeological work pursuant to this Memorandum of Agreement is carried out by or under the direct supervision of a person or persons meeting at a minimum the appropriate qualifications set forth in the Department of Interior's "Professional Qualifications."

OPTIONAL ARCHEOLOGICAL QUALIFICATIONS STIPULATION

The agency official shall ensure that all archeological work pursuant to this Memorandum of Agreement is carried out by or under the direct supervision of a person or persons meeting at a minimum the appropriate certification standards of the Society of Professional Archeologists.

C. Dispute Resolution

Where designs, plans, or specifications are submitted to the SHPO or Council for review in accordance with any of the preceding sections, and the SHPO or Council objects to an element of the submission, a mechanism must be provided for resolving the objection or, where it cannot be resolved, for noting it and making a final determination. Similarly, where a local government or member of the public objects to an action, provision must be made for taking such objections into account.

Most MOA's should contain one or more dispute resolution stipulations, but the precise character of the stipulations varies depending on the nature of the property, the nature of the undertaking, the likelihood of dispute, and the likely disputants. Consulting parties may select or adapt one or more of the stipulations listed below, as appropriate. The first provides for resumption of consultation pursuant to the regulations in the event of dispute among the parties, the second for a flexible process for rendering a final advisory recommendation, and the third for review of public objections.

DISPUTE RESOLUTION STIPULATION (I)

Should the SHPO or Council object within 30 days to any plans or specifications provided pursuant to this Memorandum of Agreement, the agency official shall consult with the objecting party to resolve the objection. If the agency official determines that the objection cannot be resolved, the agency official shall request the further comments of the Council pursuant to 36 CFR Section 800.6(b).

DISPUTE RESOLUTION STIPULATION (II)

Should the SHPO or Council object within 30 days to any plans or specifications provided pursuant to this Memorandum of Agreement, the agency official shall consult with the objecting party to resolve the objection. If the agency official determines that the objection cannot be resolved, the agency official shall forward all documentation relevant to the

[14] Appendix C to draft 36 CFR Part 66 (42 FR 5382-3).

[15] See the current Directory of Professional Archeologists, available from the Society of Professional Archeologists, c/o Department of Anthropology, Washington University, Campus Box 1114, St. Louis, MO 63130.

dispute to the Council. Within 30 days after receipt of all pertinent documentation, the Council's Executive Director will either:

a. refer the matter to the Chairman of the Council pursuant to 36 CFR Sec. 800.6(b)(7); or

b. provide the agency official with recommendations, which the agency official shall take into account in reaching a final decision.

DISPUTE RESOLUTION STIPULATION (III)

At any time during implementation of the measures stipulated in this Memorandum of Agreement, should an objection to any such measure be raised by a local government or a member of the public, the agency official shall take the objection into account and consult as needed with the objecting party, the SHPO, or the Council to resolve the objection.

Appendix A: Standard Preservation Covenants

COVENANTS

The structure(s) above described [is/are] hereby conveyed subject to the conditions, restrictions, and limitations hereinafter set forth that shall be considered as covenants running with the [land/structure] that the grantee, his heirs, and assigns covenant and agree, in the event that premises are sold or otherwise disposed of, will be inserted in the instrument of conveyance.

I. The structure(s)* will be preserved and maintained in accordance with the recommended approaches in "The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitation of Historic Buildings" (Attachment____). (To be used when the building to be sold or transferred is in good condition and not in need of renovation.)

(or)

I. The structure(s)* will be rehabilitated and maintained in accordance with the recommended approaches in "The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitation of Historic Buildings" (Attachment_____). (To be used when the building to be sold or transferred needs to be rehabilitated and then maintained.)

(or)

I. The structure(s)* will be preserved and maintained in accordance with plans approved in writing by the _____ (SHPO/Local Preservation Organization). (To be used when building to be sold or transferred is a major structure for which complete rehabilitation plans must be developed.)

II. The above restrictions shall be binding on the parties hereto, their heirs, successors, and assigns in perpetuity; however, the _____ State Historic Preservation Officer may, for good cause, modify or cancel any or all of the foregoing restrictions upon written application of the grantee, his heirs or assigns.

The acceptance of the delivery of this document shall constitute conclusive evidence of the agreement of the _____ (grantee, recipient, etc.) to be bound by the conditions, restrictions, and limitations and to perform the obligations herein set forth.

*Where only a portion or aspect of a building or structure (for example, a facade, a public space, or an interior element) has architectural or historical significance qualifying it for inclusion in the National Register, the consulting parties may agree to restrict application of covenants to that portion or aspect, and the language of the covenant should be adjusted to reflect this restriction.

Appendix B: Submission of Proposed MOA's

Where an agency, with the concurrence of the SHPO, submits a proposed MOA and adequate supporting documentation pursuant to the expedited process set forth in the July 9 guidelines (47 FR 29861), it can normally expect the Executive Director to concur in the agreement unless the Executive Director finds that the MOA fails to state clearly the agreement reached and the responsibilities accepted by the parties or that one or more of the following criteria applies:

1. Insufficient consideration of alternatives to lessen harm to historic properties.
   a. The agency official has failed to consider apparently feasible and prudent alternatives; or
   b. The agency official has initiated consideration of historic properties so late in the planning process that most alternatives have been foreclosed.

2. Inadequacy of proposed mitigation measures.
   a. The proposed actions appearinconsistent with available professional standards and guidelines issued by the Secretary or the Council or normally in use by the relevant professions; or
   b. The undertaking is large and complex, and has the potential for major, complex effects on historic properties and the proposed measures do not appear to be sufficiently well developed to address such effects. This criterion will often be met where the undertaking is development and implementation of a general land use plan, or where extensive demolition of historic properties is part of the undertaking; or
   c. The property subject to effect is a National Historic Landmark and the effect is direct and adverse, requiring application of the higher standards of planning and review called for by Section 110 of the Act; or
   d. Identification of historic properties appears incomplete and provision for subsequent identification and consideration appears inadequate.

3. Inadequacy of provisions to ensure that the mitigation measures are properly carried out.
   a. The MOA does not include a formal obligation by the agency official to carry out the measures as an integral part of the undertaking; or
   b. The agency official may require special assistance in implementing the measures. This criterion will often be met where the responsibilities of a Federal agency have been delegated to a local government that has little experience with historic preservation planning, and in cases where the SHPO will be unable or unwilling to review implementation of the measures; or
   c. Sufficient funds have not clearly been committed to cover the costs of mitigation measures.

4. Excessive costs of mitigation measures.
   a. The cost of the measures proposed appears disproportionate to the historical value of the property in question; or
   b. In the case of archeological properties, expensive data recovery is proposed without evidence that the work will result in data pertinent to significant research topics.

5. Inadequacy of public involvement or evidence of public controversy regarding impact on historic properties.
   a. The record does not indicate a good-faith effort, commensurate in scope with the magnitude of the undertaking and its effects, to inform the public and solicit and consider their views; or
   b. There is evidence of substantial opposition to the undertaking on grounds related to historic preservation; or
   c. The undertaking will take place in a multi-cultural context, in which language or cultural barriers may impede full access by the public to the decisionmaking process, and the record does not show adequate efforts by the agency official to overcome these barriers; or
   d. Special consideration appears needed in order to protect and preserve Native American religious cultural rights and practices, pursuant to the policies articulated in the Native American Religious Freedom Act (P.L. 95-341); or
   e. There is a sufficient threat of litigation to justify thorough administrative review.

6. Opposition of local government.
   a. Local government officials have expressed opposition to the impacts of the undertaking on historic properties; or
   b. Local government officials have expressed opposition to the proposed avoidance or mitigation measures.

To avoid loss of time in consultation to clarify the intent and appropriateness of the MOA, it is vital that it be accompanied by appropriate supporting documentation sufficient to allow the Executive Director to assess whether any of the above criteria are met. Preparers of MOA's should refer to 36 CFR Section 800.13 for basic documentation standards, and review the documentation to ensure that the concerns upon which the above criteria are

based are fully addressed.

It is also of fundamental importance that the MOA be a complete and comprehensive document, that is, that it cover all the potential direct and indirect effects of the undertaking on historic properties. If for any reason an MOA must be designed addressing only some of the undertaking's potential effects (for example, where identification of historic properties has not yet been completed), one of the following steps should be taken:

1. The MOA should include a stipulated process for the identification and treatment of the remainder of the project's direct and indirect effects; or

2. The MOA should be clearly designated as applicable only to specific properties or specific effects, and provision should be made for the development of subsequent MOA's covering the remainder of the project's direct and indirect effects.

Appendix C: Guidelines for the Identification of Historic Properties

DEPARTMENT OF THE INTERIOR

National Park Service

Draft 36 CFR Part 66

RECOVERY OF SCIENTIFIC, PREHISTORIC, HISTORIC AND ARCHEOLOGICAL DATA: METHODS, STANDARDS AND REPORTING REQUIREMENTS (PROPOSED GUIDELINES)

42 FR 5380-5382
published January 28, 1977

APPENDIX B

GUIDELINES FOR THE LOCATION AND IDENTIFICATION OF HISTORIC PROPERTIES CONTAINING SCIENTIFIC, PREHISTORIC, HISTORICAL, OR ARCHEOLOGICAL DATA

In order to notify the Secretary of the potential loss or destruction of significant scientific, prehistoric, historical, or archeological data pursuant to sections 2, 3 and 4 of the Act, in a manner that will permit the Secretary to act effectively in response to this notification, it is necessary that the agency provide appropriate documentation concerning the nature and significance of all historic properties, subject to impact, that may contain such data. It is recommended that such documentation be generated by agencies in the course of their planning activities carried out under the authorities of the National Environmental Policy Act of 1969 (Pub. L. 91-190) (NEPA), the National Historic Preservation Act of 1966 (Pub. L. 89-665 as amended) (NHPA), Executive Order 11593, and related authorities.

It is important that agencies understand the relationship among NEPA, such general historic preservation authorities as the NHPA, and the Archeological and Historic Preservation Act. NEPA mandates the evaluation of project impacts on the entire environment, including all kinds of cultural resources. One kind of cultural resource is the historic property which is the concern of the NHPA and Executive Order 11593. Section 106 of the NHPA sets forth specific actions to be taken when this kind of cultural resource is subject to effect. Some historic properties contain scientific, prehistoric, historical, and archeological data; the Archeological and Historic Preservation Act of 1974 provides mechanisms for the recovery of such data if and when the planning processes provided for by NEPA, NHPA, and related authorities have resulted in the conclusion that data recovery constitutes the most prudent and feasible method of impact-mitigation.

Identification of cultural resources is an obvious prerequisite to the evaluation of impact on such resources, and to the planning of methods for the mitigation of such impacts. Identification of cultural resources in general through the NEPA process involves a broad, general, interdisciplinary study of all those social and cultural aspects of the environment, both tangible and intangible, that may be affected by the undertaking. Identification of historic properties requires the location of those tangible places and things that may contain or represent historic values, and sufficient study of these properties to determine what their values are whether these values are of sufficient importance to make the properties eligible for the National Register of Historic Places. In the process of such study, it should become apparent which properties contain significant scientific, prehistoric, historic, or archeological data. Once the undertaking's impact on such properties has been evaluated, it will then be possible to ascertain whether data recovery constitutes an appropriate mitigation action, and it is at this point that the Archeological and Historic Preservation Act can be effectively utilized.

The guidelines presented in this appendix are the same as those required to identify properties eligible for the National Register of Historic Places pursuant to section 106 of NHPA as amended and to sections 2(a), 2(b), and (where applicable) 1(3) of Executive Order 11593. Although prepared for publication under these authorities, they are presented here for the convenience of Federal agencies and other users.

I. General Conduct of Location and Identification Studies. Although the exact activities necessary for the identification of historic properties will vary depending on the nature of agency landholdings or jurisdiction and, where applicable, on the nature of the agency's undertaking, the following steps will generally be appropriate.

1. Background Research and Evaluation of Existing Data.-a. Since few areas of the Nation have yet been adequately surveyed for historic properties, current lists of such properties seldom provide adequate information for full identification. Documentary research is the starting place for any identification study, however. Systematic study and evaluation of documentary data will usually permit predictions

to be made about the kinds of historic properties that may be encountered in the area, and about their possible distributions. Such study may also make it possible to develop a broad evaluatory framework within which the significance of particular properties can be judged. Finally, background research may pinpoint some particular properties that are already adequately documented or properties that are known but need further study to obtain full documentation. In undertaking background research, answers to the following questions should be sought:

(1) Are there known historic properties in the area?

(2) Is knowledge about the presence or absence of historic properties based on a survey or surveys carried out according to the standards set forth in this appendix?

(3) If not, to what extent are survey data lacking?

(4) If the area has not been systematically surveyed, what predictions can be made about the location or kinds of historic properties to be expected based on data from nearby surveyed areas, from the known history of the area, from the constraints known to be imposed by the natural environment, etc.?

(5) Given the known history and pre-history of the region, the social and cultural concerns of its people, and pertinent State, local, and regional plans, what kinds of preservation and/or research priorities appear to be appropriate, and what kinds of historic properties might be important to the satisfaction of these priorities?

b. The agency undertaking a location and identification study, should be vigorous in searching out useful sources of data, and should encourage innovative approaches in their use to predict the locations of properties and to develop evalutory frameworks. It must be recognized, however, that some institutions and organizations that maintain lists, files, or other bodies of unpublished data are legitimately concerned about the integrity of these documents and/or about the cost involved in permitting their use; these concerns should be ascertained and, if legitimate, honored. At least the following sources of background data should be consulted:

(1) The State Historic Preservation Officer should be consulted with reference to the State Historic Preservation Plan maintained by his office, to obtain such data as:

(a) Information on properties listed in or nominated to the National Register, properties on other lists, inventories, or registers known to the State Historic Preservation Officer, and properties on which the State has evaluated and unevaluated survey data;

(b) Information on predictive data regarding potential properties in the area;

(c) Recommendations as to the need for surveys in the area;

(d) Recommendations concerning methods that should be used in conducting such surveys and possible sources of professional expertise;

(e) Results of any previous surveys in the area, and the State Historic Preservation Officer's comments thereon; and

(f) Recommendations concerning pertinent State or local laws and policies concerning historic properties.

(2) Basic published and unpublished sources on local history, prehistory, anthropology, ethnohistory, and ecology should be studied to obtain an overview of the region's potential historic property distributions and research or preservation values.

(3) The National Register and other lists or files of data on historic properties should be consulted. The National Register is published in its entirety in the FEDERAL REGISTER, usually in February of each year; additions are published regularly in the FEDERAL REGISTER. The most recent full publication and subsequent additions should be consulted to determine whether any properties exist in an area to be affected by a Federal undertaking. The National Register listings are also accompanied by a list of properties in both Federal and nonfederal ownership which have been determined to be eligible for inclusion as well as a list of pending nominations. The catalogs of the Historic American Buildings Survey and the Historic American Engineering Record maintained by the National Park Service, and any similar surveys and published reports should be utilized. State, university, or professional society historians, architects, architectural historians, and archeologists, and local organizations may also have registers, inventories, catalogs, or other lists of sites or areas with known or presumed historic values.

(4) Persons with first-hand knowledge of historic properties and/or their historic values should be interviewed where feasible and appropriate. Such interviews, and a proper respect for the opinions expressed by those interviewed, are of particular importance where properties of cultural importance to local communities or social groups may be involved. Oral data should be elicited and recorded using existing professional methods such as those prescribed by the Oral History Association, Box 13734, N.T. Station, Denton, Texas 76203.

c. Background research should be undertaken by or under the supervision of professional historians, architectural historians, historical architects, and/or archeologists. It will often be necessary to draw upon the services of specialists such as ethno-historians, anthropologists, sociologists, and cultural geographers to make full use of documentary data.

2.Field Inspection. If review and evaluation of existing information fails to produce complete data based upon prior professional examination of the area subject to environmental impact, then the background research should be supplemented by direct examination of the area of concern.

a. Staff and Planning. Field inspection usually can be performed only by professional historians, archeologists, architectural historians, and historical architects. It will sometimes be necessary or useful to call upon additional specialists to deal with particular characteristics of the area. For example, if industrial properties are present the services of an industrial historian or an industrial archeologist may be appropriate, and if the continuing ways of life of local social or ethnic groups are important to understanding historic properties, social or cultural anthropologists and folklorists may be necessary additions to the staff. If paleontological materials are likely in cultural context (i.e. in association with cultural material) the services of a professional paleontologist would be necessary. The exact nature of the appropriate staff will depend on the kinds of data that can be expected to occur. For example, it is obviously unreasonable to employ an architectural historian in the absence of buildings or structures.

The nature of the area will also affect the kinds of methods that must be employed. Urban areas and rural areas require different approaches. Terrain, vegetation, land ownership and other factors will also affect the time required to conduct an inspection and the kinds of techniques that will be required to complete it. For example, if few indications of archeological sites are likely to appear on the surface of the ground due to vegetation, alluviation, or other factors, it will probably be necessary for archeologists to undertake subsurface testing both to locate sites and to obtain sufficient information for evaluation purposes.

Agencies planning field inspection should take factors such as the above into account in preparing work plans, and should consult with the Secretary, the State Historic Preservation Officer, and/or other qualified persons or groups to determine exactly what special approaches may be necessary.

Adequate records must be kept of all field inspections to clearly indicate what lands were inspected, the degree of intensity with which they were inspected, the kinds of historic properties sought, all historic properties recorded, and any factors that may have affected the quality of the observations.

b. Levels of field inspection: The intensity of field inspection in advance of an undertaking should be commensurate with the projected impact of the undertaking.

An undertaking whose only effects will be indirect and diffuse--for instance an undertaking whose sole effect will be to permit generalized population growth in a large area--will generally require a systematic sample reconnaissance, or some other less intensive field inspection than will an undertaking having definable direct impacts.

The level of project planning will also affect the nature of field inspection undertaken; at an early level of planning, when many options are open for location of project facilities, low-intensity reconnaissance may be appropriate to provide planning guidance; when alternative project locations have been reduced, a much more intensive survey will usually be necessary.

Although many different types of field inspections may be appropriate in different situations, such inspections generally fall into two types: reconnaissance survey and intensive survey.

3. Reconnaissance Survey -- Full identification of historic properties for purposes of determination of eligibility and detailed planning normally requires that an intensive survey be conducted as discussed at section I.4 of this appendix. Some agencies however, may find it helpful to their planning activities to conduct reconnaissance surveys in order to obtain preliminary or predictive data on the distribution and nature of historic properties. Reconnaissance survey is designed to provide a general impression of an area's historic properties and their values, and involves small-scale field work relative to the overall size of the area being studied. Although reconnaissance survey will seldom if ever provide sufficient data to insure identification of all historic properties in an area, it should make it possible to identify obvious or well-known properties, to check the existence and condition of properties tentatively identified or predicted from background research, to identify areas where historic properties are obviously lacking, and to indicate where certain kinds of properties are likely to occur, thus making possible a more informed and efficient intensive survey at a later stage in planning.

In areas of potential direct impact from Federal undertakings, reconnaissance survey should be used only as a preliminary to an intensive survey, unless the reconnaissance reveals that it is impossible or extremely unlikely for historic properties to occur in the area. In areas of potential indirect impact, reconnaissance may provide sufficient data to permit an agency to evaluate its possible impacts and to develop plans to assist local agencies in avoiding or mitigating such impacts. In cases where a Federal agency intends to license or permit a State, local, or private undertaking, particularly if the undertaking involves large land areas, a reconnaissance may provide the agency with sufficient information to permit the development of protective stipulations in the permit or license. An agency that participates in many small-scale undertakings in a large region may find it useful to undertake a reconnaissance of the region in order to develop a basis for making decisions about the need for intensive surveys on individual projects, or to obtain guidance in the kinds of

survey activities that may be needed. Although a reconnaissance survey will not ordinarily provide sufficient data to insure identification of all historic properties under the jurisdiction or control of, or subject to impact by a Federal agency, it may be a very useful tool for effective agency planning. A reconnaissance survey is preceded by adequate background research as discussed above. In the field an effort is made to gain a sufficient impression of the area under consideration, and its cultural resources, at least to permit predictions to be made about the distribution of historic properties within the area and the potential significance of such properties. For small areas, a superficial visit to the area by professionals in pertinent disciplines (architectural historians, historians, archeologists, and others whose expertise is appropriate to the study of the area) may be sufficient for reconnaissance purposes. Such a reconnaissance should provide an informed general opinion about the kinds of properties that might be encountered and the appropriate methods to be used in completing an intensive survey if such a survey is necessary. For larger areas, a more systematic approach to reconnaissance survey is usually necessary. For archeological resources this usually involves the detailed inspection of selected lands representing a statistically valid sample of the entire area, from which projections can be made to the entire area. Comprehensive drive-through or walking inspections of architecturally significant resources or at least spot-checks of various neighborhoods within the area are appropriate for the characterization of architectural resources in such a reconnaissance. Coordination in the field with local parties interested in or knowledgeable about the area's history and historic properties is appropriate during a reconnaissance as during an intensive survey.

4. Intensive Survey. An intensive survey is a systematic detailed field inspection done by or under the supervision of professional architectural historians, historians, archeologists, and/or other appropriate specialists. This type of study is usually required to determine the significance of properties and their eligibility for listing in the National Register. It is preceded by adequate background research as discussed above. All districts, sites, buildings, structures, and objects of possible historical or architectural value are examined by or under the supervision of a professional historian, architectural historian, or historical architect. Persons knowledgeable in the history, prehistory, and folkways of the area are interviewed by or under the supervision of a professional historian, ethnohistorian, cultural anthropologist, or folklorist. The surface of the land and all districts, sites, buildings, and objects of possible archeological value are inspected by or under the supervision of a professional archeologist. Historic archeologists are employed where historic sites are likely, prehistoric archeologists are used if prehistoric sites are probable. Systematic subsurface testing is conducted if necessary to locate or obtain full descriptive and evaluative data. Documentary data necessary to the evaluation of specific properties are compiled and analyzed. A systematic effort is made to identify all properties within the area of concern that might qualify for the National Register, and to record sufficient information to permit their evaluation. All historic properties should be evaluated against the criteria established at 36 CFR 60.6 and supporting documentation should be developed with reference to the standards published in the FEDERAL REGISTER for comment on April 27, 1976, as 36 CFR 63, Appendix A. Since the precise kinds of field activities necessary to identify historic properties vary among the different regions of the United States, it is vital that agencies preparing to undertake intensive surveys consult with the State Historic Preservation Officer and other sources of professional guidance in developing plans for such surveys.

II. Special Considerations with respect to Submerged Lands. For submerged lands documentary research by qualified researchers may serve to indicate the need for, and recommended location of physical and/or electronic surveys for submerged archeological sites and sunken vessels. Because of the specialized nature and problems attending underwater survey activities, agency officials may wish to determine specific survey procedures in consultation with the Director, Office of Archeology and Historic Preservation, National Park Service, Washington, D.C. 20240.

III. Documentary Location and Identification Studies. The nature and level of specificity required in documenting a location and identification study will vary somewhat with the scope and kind of undertaking (if any) for which the study is conducted, the kinds of information already on hand about the area being studied, and other factors. In general, however, it is necessary to document the methods used in conducting the study, the assumptions that guided the application of the methods, the results of applying the methods, and any deficiencies in these results that may have arisen from the application or misapplication of the methods. Typically, the deport of a location and identification study should contain the following types of information.

1. Description of the study area. Boundaries of the area should be indicated and the rationale used in defining the boundaries should be presented. Topographic and environmental characteristics that might affect the distribution, significance, or preservation of

historic properties should be described.

2.Background research and preparation. Documentary data and, where relevant, data from oral sources pertinent to the study should be discussed and evaluated. Sources utilized should be identified and methods of analysis presented and discussed. Background data should be analyzed in such a way as to form a basis for planning any necessary field investigations, and for evaluating the significance of properties that may be discovered. Accordingly, the researcher should indicate a familiarity not only with local history and prehistory, but also with the professional literature in history, architecture, anthropology, archeology, or other disciplines that may provide bases for evaluating historic properties.

3. Research Design. The report should also set forth the research design or plan of study that guided the work, discussing what sorts of historic properties were expected in the area, what historic values they might represent, and what strategies were to be employed in seeking the resources. Often it will be possible to make specific predictions about what kinds of properties can be expected in the field and how they ought to appear. The researcher should also set forth any biases or sources of error that can be identified as having potentially influenced the results of the study.For example, researchers trained specifically in prehistoric archeology may be unable to accurately observe historic properties; if this bias is not corrected by adding an historian, historic archeologist, or architectural historian to the study team, it should be explicitly acknowledged in the report as a possible source of error.

4. Field Iaspection. The composition of the field study team should be presented. An attempt should be made to insure that all pertinent professional disciplines are represented in this team. Names and qualifications of team members and consultants should be presented and their duties discussed. It is the researcher's obligation to employ persons and methods that will insure the accurate recognition of all classes of historic properties. Methods used in seeking, observing, and recording historic properties should be clearly set forth. The extent to which the study area was fully covered by inspectors on foot should be presented, textually and/or using maps and charts. Any portion of the area not inspected, or inspected at a lower level of intensity, should be indicated and discussed. On-the-ground observational procedures should be presented.

a. In reporting the inspection of lands thought to contain nonstructural historic properties, or structures in ruins, the following should normally be discussed:

(1) How surveyors were distributed over the study area, how far apart they were placed and in what directions they walked;

(2) What signs of historic and/or prehistoric activity surveyors were instructed to seek;

(3) What special techniques, if any, were used to seek special kinds of properties thought to occur in the area (e.g., rock art, standing structures), and/or to cope with special diffculties (e.g., pavement, heavy brush, overburden);

(4) If subsurface testing was done, under what conditions it was done, what techniques were used, and where it was done; and

(5) If less than the entire area was inspected, a sampling design should be presented and justified.

b. In reporting the inspection of lands containing buildings, and/or structures, the following should normally be discussed:

(1) How surveyors covered the area-by foot, auto, etc.;

(2) Whether surveyors proceeded individually or as teams;

(3) Intensity of inspection of properties; did the inspection address only facades? exteriors?interiors?

(4) How much of the area was covered at a time; did the inspection cover the entire area, proceed in stages, or cover only a portion? The rationale for the coverage strategy should be presented; and

(5) What kinds of properties were surveyors instructed to seek (e.g., industrial as well as domestic buildings; vernacular architecture as well as "high style" buildings; buildings representing different "themes")?

c. The above categories are not presented as a "check list" but as an example of the kinds of questions that should be answerable using the report of a field inspection. To the extent possible, archeological and architectural/historical inspections should be coordinated, since many properties discovered may be of both archeological and historic architectural importance.

d. All procedures used should be justified in terms of their applicability to the area, its potential properties, its environment, and the plan of study.

5. Results. a. If an intensive survey has been done, all historic properties should be clearly and completely described. To the extent possible, documentation of properties should refer to Appendix A to the "Procedures for Requesting Determination of Eligibility," 36 CFR Part 63, published for comment in the FEDERAL REGISTER, April 27, 1976. Documentation can be provided on standard forms or as text, but should be complete and internally consistent.

b. If a reconnaissance survey has been done, the predicted distributions of historic properties should be presented and justified on the basis of background research and field inspection. Specific historic properties actually recorded during the field inspection should be described, insofar as possible, as set forth at

section III(5)(a) above.

c. Negative data, as well as positive data should be presented and discussed, i.e., if historic properties were not found, this fact should be noted and, if possible, accounted for.

6. Evaluation.-a. Evaluations of historic properties should be made in sufficient detail to provide an understanding of the historical values that they represent, so that this understanding can serve as a basis for managing the properties or planning impact-mitigation programs if necessary. Properties of importance to a community, neighborhood, social or ethnic group should be discussed with reference to the values and concerns of those to whom the properties may be important.

b. If an intensive survey has been done, all historic properties should be evaluated against the criteria of eligibility for the National Register of Historic Places set forth at 36 CFR 60.6.

c. If a reconnaissance survey has been done, to the extent possible, the predicted significance of each kind of historic property likely to occur within the study area should be presented and justified in relation to its general cultural setting, with reference to the criteria set forth at 36 CFR 60.6.

7. Recommendations. In most cases it is expected that the report will provide recommendations concerning any need that may exist for further study, evaluation, or, where applicable, impact mitigation.

8. Accompanying photographs, graphics, and tabular material. A location and identification study report should contain sufficient photographs, maps, charts, tables, and appendix material to insure its accurate use for study and planning purposes.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

36 CFR Part 801

Historic Preservation Requirements of the Urban Development Action Grant Program

AGENCY: Advisory Council on Historic Preservation.

ACTION: Final regulations.

SUMMARY: These final regulations implement the historic preservation review provisions of Section 110 of the Housing and Community Development Act of 1980 (Pub. L. 96–399, 94 Stat. 1614) and Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470). Section 110(c) of Pub. L. 96–399 requires, among other things, the Council to prescribe regulations for expeditious review and comment on Urban Development Action Grant projects which affect properties listed in or eligible for the National Register of Historic Places. The proposed regulations establish this required expedited Council commenting process.

EFFECTIVE DATE: August 20, 1981.

APPENDICES

Appendix 1—Identification of Properties: General

A. Introduction

Because of the high probability of locating properties which are listed in the National Register or which meet the Criteria for listing in many older city downtowns, this appendix is designed to serve as guidance for UDAG applicants in identifying such properties. This appendix sets forth guidance for applicants and does not set a fixed or inflexible standard for identification efforts.

B. Role of the State Historic Preservation Officer

In any effort to locate National Register properties or properties which meet the Criteria, the State Historic Preservation Officer is a key source of information and advice. The State Historic Preservation Officer will be of vital assistance to the applicant. The State Historic Preservation Officer can provide information on known properties and on studies which have taken place in and around the project area. Early contact should be made with the State Historic Preservation Officer for recommendations about how to identify historic properties. For UDAG projects, identification of National Register properties and properties which meet the Criteria is the responsibility of the applicant. The extent of the identification effort should be made with the advice of the State Historic Preservation Officer. The State Historic Preservation Officer can be a knowledgeable source of information regarding cases wherein the need for a survey of historic properties is appropriate, recommended type and method of a survey and the boundaries of any such survey. Due consideration should be given to the nature of the project and its impacts, the likelihood of historic properties being affected and the state of existing knowledge regarding historic properties in the area of the project's potential environmental impact.

C. Levels of Identification

1. The area of the project's potential environmental impact consists of two distinct subareas: that which will be disturbed directly (generally the construction site and its immediate environs) and that which will experience indirect effects. Within the area of indirect impact, impacts will be induced as a result of carrying the project out. Historic and cultural properties subject to effect must be identified in both subareas, and the level of effort necessary in each may vary. The level of effort needed is also affected by the stage of planning and the quality of pre-existing information. Obviously, if the area of potential environmental impact has already been fully and intensively studied before project planning begins, there is no need to duplicate this effort. The State Historic Preservation Officer should be contacted for information on previous studies. If the area has not been previously intensively studied, identification efforts generally fall into three levels:

a. *Overview Study*. This level of study is normally conducted as a part of general planning and is useful at an early stage in project formulation. It is designed to obtain a general understanding of an area's historic and cultural properties in consultation with the State Historic Preservation Officer, by:

(1) assessing the extent to which the area has been previously subjected to study;

(2) locating properties previously recorded;

(3) assessing the probability that properties eligible for the National Register will be found if the area is closely inspected; and

(4) determining the need, if any, for further investigation.

An overview study includes study of pertinent records (local histories, building inventories, architectural reports, archeological survey reports, etc.), and usually some minor on-the-ground inspection.

b. *Identification Study*. An identification study attempts to specifically identify and record all properties in an area that may meet the criteria for listing in the National Register. In conducting the study, the applicant should seek the advice of the State Historic Preservation Officer regarding pertinent background data. A thorough on-the-ground inspection of the subject area by qualified personnel should be undertaken. For very large areas, or areas with uncertain boundaries, such a study may focus on representative sample areas, from which generalizations may be made about the whole.

c. *Definition and Evaluation Study*: If an overview and/or an identification study have indicated the presence or probable presence of properties that may meet the National Register Criteria but has not documented them sufficiently to allow a determination to be made about their eligibility, a definition and evaluation study is necessary. Such a study is directed at specific potentially eligible properties or at areas known or suspected to contain such properties. It includes an intensive on-the-ground inspection and related studies as necessary, conducted by qualified personnel, and provides sufficient information to apply the National Register's "Criteria for Evaluation" [36 CFR Part 60.6].

2. An overview study will normally be needed to provide basic information for planning in the area of potential environmental impact. Unless this study indicates clearly that no further identification efforts are needed (e.g., by demonstrating that the entire area has already been intensively inspected with negative results, or by demonstrating that no potentially significant buildings have ever been built there and there is virtually no potential for archeological resources), and identification study will probably be needed within the area of potential environmental impact. This study may show that there are no potentially eligible properties within the area, or may show that only a few such properties exist and document them sufficiently to permit a determination of eligibility to be made in accordance with 36 CFR Part 60. Alternatively, the study may indicate that potentially eligible properties exist in the area, but may not document them to the standards of 36 CFR Part 60. Should this occur, a definition and evaluation study is necessary for those properties falling within the project's area of direct effect and for those properties subject to indirect effects. If a property falls within the general area of indirect effect, but no indirect effects are actually anticipated on the property in question, a definition and evaluation study will normally be superfluous.

Appendix 2—Special Procedures for Identification and Consideration of Archeological Properties in an Urban Context

A. Archeological sites in urban contexts are often difficult to identify and evaluate in advance of construction because they are sealed beneath modern buildings and structures. Prehistoric and historic sites within cities may be important both to science and to an understanding of each city's history, however, and should be considered in project planning. Special methods can be used to ensure effective and efficient consideration and treatment of archeological sites in UDAG projects.

1. If it is not practical to physically determine the existence or nonexistence of archeological sites in the project area, the probability or improbability of their existence can be determined, in most cases, through study of:

a. Information on the pre-urban natural environment, which would have had an effect on the location of prehistoric sites;

b. Information from surrounding areas and general literature concerning the location of prehistoric sites;

c. State and local historic property registers or inventories;

d. Archeological survey reports;

e. Historic maps, atlases, tax records, photographs, and other sources of information on the locations of earlier structures;

f. Information on discoveries of prehistoric or historic material during previous construction, land levelling, or excavation, and

g. Some minor on-the-ground inspection.

2. Should the study of sources such as those listed in Section (1)(a) above reveal that the following conditions exist, it should be concluded that a significant likelihood exists that archeological sites which meet the National Register Criteria exist on the project site:

a. Discoveries of prehistoric or historic material remains have been reliably reported on or immediately adjacent to the project site, and these are determined by the State Historic Preservation Officer or other archeological authority to meet the Criteria for the National Register because of their potential value for public interpretation or the study of significant scientific or historical research problems; or

b. Historical or ethnographic data, or discoveries of material, indicate that a property of potential cultural value to the community or some segment of the community (e.g., a cemetery) lies or lay within the project site; or

c. The pre-urbanization environment of the project site would have been conducive to prehistoric occupation, or historic buildings or occupation sites are documented to have existed within the project site in earlier times, and such sites or buildings are determined by the State Historic Preservation Officer or other archeological authority to meet the Criteria of the National Register because of their potential value for public interpretation or the study of significant scientific or historical research questions, and

d. The recent history of the project site has not included extensive and intensive ground disturbance (grading, blasting, cellar digging, etc.) in the location, or extending to the depth at which the remains of significant sites, buildings, or other features would be expected.

B. Where review of sources of information such as those listed in Section (1)(a) above reveals no significant likelihood that archeological resources which meet the National Register Criteria exist on the project site, no further review is required with respect to archeology provided the State Historic Preservation Officer concurs.

C. Where review of sources of information such as those listed in Section (1)(a) above, reveals that archeological resources which meet the National Register Criteria are likely to exist on the project site, but these resources are so deeply buried that the project will not intrude upon them, or they are in a portion of the project site that will not be disturbed, a determination of "No Effect" is appropriate in accordance with § 801.3(c)(2)(i).

D. Where review of sources of information such as those listed in Section (1)(a) above, reveals that archeological resources which meet the Criteria exist or are likely to exist on the project site, and that the project is likely to disturb them, a determination of "No Adverse Effect" may be made in accordance with § 801.3(c)(2)(ii) if:

1. The applicant and/or developer is committed to fund a professionally supervised and planned pre-construction testing program, and to modification of the project in consultation with the State Historic Preservation Officer to protect or incorporate within the project the archeological resources discovered with a minimum of damage to them, or if:

2. The applicant and/or developer is committed to fund a professionally supervised and planned archeological salvage program, coordinated with site clearing and construction, following the standards of the Secretary of the Interior issued pursuant to the Archeological and Historic Preservation Act (16 U.S.C. 469) and the applicant finds that this program negates the adverse effect, in accordance with the standards set forth in Section X of the Council's "Supplementary Guidance for Review of Proposals for Treatment of Archeological Properties" (45 FR 78808).

E. When archeological sites included in the National Register or which meet the Criteria are found to exist on the project site or in the area of the project's environmental impact, and where the project is likely to disturb such resources, and where the adverse effect of such disturbance cannot be negated by archeological salvage, a determination of "Adverse Effect" is appropriate in accordance with § 801.3(a)(2)(iii).

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